1123.

SUPREME COURT OF THE UNITED STATES.

No. 129.

STEPHEN SEWALL, APPELLANT,

vs.

HENRY V. CHAMBERLAIN.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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Pleas had before the honorable the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three; present, his honor William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the eighth day of February, in the year of our Lord one thousand eight hundred and forty-three, Stephen Sewall filed in said court his bill of complaint against Henry V. Chamberlain, in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States within and for the southern district of Alabama, sitting in equity, humbly complaining, showeth unto your honors:

Your orator, Stephen Sewall, of Winthrop, in the county of Kennebec, and State of Maine, and a citizen of the same State, that heretofore, to wit, on or about the fourteenth day of February, in the year eighteen hundred and twenty-eight, your orator, reposing trust and confidence in Henry V. Chamberlain, of the city of Mobile, the defendant in this suit, and who is a citizen of the State of Alabama, appointed him his attorney and agent to attend to the collection and settlement of some outstanding claims of your orator, in the State of Alabama, as by your orator's letter of attorney to him in writing, bearing date the day and year aforesaid, which your orator alleges is in the possession or under the control of the defendant, and which your orator prays may be set forth fully and truly in his answer to this bill of complaint, or may be produced and submitted to inspection, as this honorable court shall direct, will on reference appear.

And your orator further sheweth to your honors, that the defendant accepted said appointment, and duly informed your orator thereof by his letter, bearing date the thirtieth day of April thereafter, a copy of which is hereto annexed, marked A, as by said letter in your orator's possession, and ready to be produced as this honorable court shall direct, will on reference appear.

And your orator further showeth, that among other claims put into the hands of the defendant, and which he was authorized to collect as your orator's said agent, was one against Stephen Chandler, late of Mobile, consisting of a promissory note made by said Chandler in favor of your orator, bearing date on or about the sixth day of August, eighteen hundred and twenty-four, for the sum of four hundred and eighty-five dollars, payable on or before the first day of March next, after the date thereof, negotiable and payable at the Bank of Mobile; which note was secured by a mortgage made by said Chandler to your orator, bearing date with said note, of the following described land, to wit, a

lot of land, situate in the city of Mobile, being lot number one, in square thirteen, as designated and marked by Thomas Hubbard, esq., surveyor of the city of Mobile, and conformably to said Hubbard's map thereof, being the same purchased by your orator of the Mobile Lot Company, having a front of fifty feet on the street, now called St. Emanuel street, and eighty feet in depth, French measure, as by said mortgage and note now on file in the office of the clerk of this court, in the suit of Stephen Sewall against Stephen Chandler, in equity, and to which your orator prays leave to refer, will on reference appear.

And your orator further sheweth, that the lot of land, so mortgaged as aforesaid, was a valid and sufficient security for the payment of the said debt, and your orator's instructions to the defendant were to collect the debt, or to recover back the said lot, as by your orator's letters to him, bearing date, respectively, the twenty-fifth of February, the tenth, and twenty-fourth of March, and the eleventh of June, eighteen hundred and twenty-eight, which your orator alleges are in the possession or under the control of the defendant, and which your orator prays may be set forth fully and truly in his answer to this bill, will, on reference, among other things, more fully appear.

And your orator further shows, that he is informed, and believes it to be true, that the defendant, acting as your orator's agent in that behalf, caused a suit to be commenced in the name of your orator against the said Stephen Chandler in the United States district court for the southern district of Alabama, in equity, to foreclose said mortgage, and that such proceedings were had therein before said court, that on or about the fifteenth day of December, in the year eighteen hundred and twenty-nine, a decree was made foreclosing said mortgage, for the sum of six hundred and seventy dollars and ninety-one cents, and ordering a sale of said mortgaged premises for the payment thereof, with interest and costs. And that, in pursuance of said decree, the same were afterwards, to wit, on or about the fifteenth day of March, in the year eighteen hundred and thirty, sold at public auction by the clerk of said court to the defendant, who was then and there acting as your orator's agent in the matter, for the sum of one hundred and fifty dollars, as by the proceedings in said suit remaining of record in said court, will, on reference, more fully and at large appear, and to which your orator begs leave to refer.

And your orator further shows, that the defendant appeared at said sale as your orator's agent, and bid in the said property as your orator's agent, and that the said sum of one hundred and fifty dollars was merely a nominal price, and nothing near the true and fair value of said lot; and that it was the highest bid at said sale, because it was understood and believed by those present, that your orator, by his said agent, was on the ground, and would buy in the same, or bid to the full amount of the said decree.

And your orator further shows to your honors, that he is informed, and believes it to be true, that the defendant, under color of

his said agency, procured the deed of the lot of land so sold as aforesaid under your orator's said decree, to be made to himself, as if it were his own individual purchase; whereas it was the purchase of your orator.

And your orator further shows to your honors, that the said defendant wholly neglected and refused either to inform your orator of his doings in the premises, or to render any account, or to answer any of your orator's numerous letters to him upon the subject, or to convey him said lot of land; that, on the contrary, notwithstanding the trust and confidence reposed in him by your orator, he, the defendant, without your orator's knowledge or consent, and in total disregard of your orator's rights and interests in the premises, afterwards, to wit, on or about the eighth day of September, in the year one thousand eight hundred and thirty-four, sold and conveyed the aforesaid lot of land in fee simple to one Samuel P. Bullard, for the sum of six hundred dollars, as by his deed to said Bullard, bearing date the day and year last aforesaid, or by the record thereof duly recorded in the office of the clerk of the county court of Mobile county, in book of deeds N, pages 23 and 30, will on reference appear.

And your orator further shows to your honors, that the defendant has wholly neglected and refused to inform your orator of this sale made by him to Bullard, and of all the particulars thereof; and to render your orator any account of the moneys received therefrom, although your orator has repeatedly *written* to him upon the subject of said Chandler lot and claim, and has twice since said sale was made seen him at the North, where he passed the summers of 1835, 1838, and 1841, and spoken to him upon the subject.

And your orator further shows, that the only information or account rendered by the defendant to your orator touching this claim, was contained in an account rendered in Boston, in June, eighteen hundred and thirty-five, nearly a year after the sale to Bullard, in which your orator was credited with the sum of seventy-two dollars, as the entire proceeds of the said claim. But your orator being then wholly *uninformed* upon the subject, and dissatisfied as well with such result from a just claim which he believed to be good, as with the reserve and conduct of the defendant, which was then and is to this day wholly unexplained by him, your orator struck said credit of seventy-two dollars from the account then rendered and settled, and left the whole matter of said Chandler lot and claim open for settlement, when further and more satisfactory information should be obtained, and which the defendant then promised soon after to give.

And your orator further shows to your honors, that he did not obtain any discovery or information of the said sale to Bullard, or the *particulars* thereof, or of any of the particulars of the defendant's proceedings and acts in the premises, until the month of December last. And although your orator continued to write to said defendant until November, eighteen hundred and forty-one, upon the subject, he has never yet received an answer, and that in fact the letter of the defendant of the 30th April, eighteen hundred and twenty-eight, herein before referred

to, a copy of which is hereto annexed, marked A, is the only letter received by your orator from the defendant since his appointment as agent as aforesaid.

And your orator further shows to your honors, that, from the fourteenth day of February, eighteen hundred and twenty-eight, until about the middle of June, eighteen hundred and thirty-two, the defendant acted as your orator's agent under the aforesaid letter of attorney, which remained, during the whole of said period, unrevoked and in full force. And that, during the whole of said period, and until on or about the sixth of June, 1835, the defendant had in his hands, belonging to your orator, a large sum of money, exclusive of the money received from said Bullard, to wit, upwards of *six hundred* dollars, as by his account with your orator before referred to, and which was settled in Boston in June, 1835, will on reference appear, and to which your orator prays leave to refer, should it be necessary so to do.

And your orator further shows to your honors, that he is informed that Samuel P. Bullard was a bona fide purchaser of said lot from the defendant, without notice of his agency in the matter, or that he held it merely as trustee; and your orator is therefore advised, that he cannot recover the same from the said Bullard.

And your orator further shows, that he is informed, and believes it to be true, that said Stephen Chandler died some time in the year eighteen hundred and thirty-nine or forty, utterly insolvent; and that he was, for years previous to his death, insolvent; and that your orator's only security for his debt was the said mortgaged premises.

And your orator further shows to your honors, that he has never been willing to release his claim to said mortgaged premises for less than the full amount of said mortgaged debt and interest. And your orator charges, and humbly insists, that he is justly and equitably entitled to receive and recover from the defendant the whole amount of the aforesaid decree of foreclosure, to wit, the sum of six hundred and seventy dollars and ninety-one cents, together with interest thereon, from the fifteenth day of December, eighteen hundred and twenty-nine; or the full value of said lot of land, if the same shall be found of greater value than said decree and interest; or the whole amount received by the defendant from the sale thereof, if sold for its fair and just value, together with all the profits made by the use of said money, or interest thereon, without any deduction for commissions for agency. And your orator alleges, that said lot of land is worth more than two thousand dollars. And your orator charges, that the defendant has mixed the moneys received by him from the sale of said lot with his own private funds, and has used the same, and made large profits by the use of said trust moneys in trade, or speculations, or otherwise; and that the moneys so received by the defendant, together with the profits made by the use thereof, amount to more than the sum of two thousand dollars.

And your orator further shows to your honors, that he has repeatedly, and in a friendly manner, requested the defendant to pay him said mortgage debt and interest, or to convey him said lot of land, or to ac-

count to him for the value thereof, or to account to your orator for all the moneys received by him, the defendant, from the sale of it, together with all the profits made by the use of said moneys in trade, speculation, or otherwise, which the defendant has often promised, but has as yet wholly neglected to do. And, in confirmation of your orator's efforts, in a friendly way, to obtain from the defendant a settlement of this long pending claim, your orator begs leave to refer, among other things, to your orator's letters, written to the defendant, hereinbefore referred to, as well as to those bearing date November eighth, eighteen hundred and thirty-eight, July fifth, eighteen hundred and thirty-nine, and November eighth, eighteen hundred and forty-one, when produced, and which your orator alleges are in the possession of the defendant, and which your orator prays may be fully and truly set forth in the defendant's answer hereto, or produced as this honorable court shall direct; or that your orator have leave to refer to copies thereof, which are hereto annexed, in schedule C. And your orator well hoped that the defendant would have complied with such reasonable requests, or some of them. But now, so it is, may it please your honors, that the defendant wholly neglects and refuses, either to convey to your orator said lot of land, or to pay the said Chandler mortgage debt and interest, or to account for the value thereof, or to account to your orator for the moneys received from the sale of said lot and the profits made by the use of such moneys, or to render any account whatever of his doings in the premises, although he has promised so to do; and, for justification thereof, your orator is informed, that said defendant sometimes pretends that he has already accounted to your orator for the whole matter of his said agency, and settled the same. Whereas your orator charges that such allegation is wholly unfounded and untrue, and that the defendant has never accounted for said Chandler lot and claim, or in any manner settled the same; but that there is now justly due from the defendant, to your orator, on acccount thereof, considerably more than the sum of two thousand dollars. And at other times the defendant pretends that he has bought the said Chandler lot and claim of your orator for a valuable consideration, which he has paid in full; whereas your orator charges that such allegation is wholly unfounded and untrue. That your orator, for the sake of settling said matter with the defendant in a friendly manner, was willing to sell, and did, subsequently to eighteen hundred and thirty-five, on several occasions, offer to sell the said lot and claim to the defendant, and requested the defendant to say what he would give for them; particularly in Boston, in 1838, and subsequently by letter, as by your orator's letters to the defendant, hereinbefore referred to, or some of them, will, on reference, appear; but that the defendant, although, on the occasion last referred to, he promised to make a full statement and answer on his return home, never made any reply to such offer on the part of your orator. And at other times the said defendant pretends that he bought said property at said foreclosure sale in March, eighteen hundred and thirty, on his own individual account, by agreement and consent of your orator, and not

as your orator's agent; and that the price for which it was then sold was its full and fair value, and that your orator has since ratified and confirmed the said purchase; whereas your orator charges that such allegation is in every particular wholly unfounded and untrue. That your orator neither agreed nor consented to any such purchase, and has never ratified or confirmed the same; and that said lot of land was not then and there sold for its full and fair value, but was sold at a mere nominal price, and bid in by the defendant as your orator's agent in that behalf. The defendant never even informed your orator of the proceedings had in the case, and that your orator had no information as to the particulars of said foreclosure and sale until the month of December last. And your orator charges that the defendant, in the whole matter of the aforesaid Chandler mortgage and claim, and his proceedings thereon, especially in neglecting and refusing to keep your orator informed of such proceedings, in neglecting and refusing to answer your orator's letters upon the subject, in procuring the deed of the said lot in his own name, and in selling and conveying the said lot to a bona fide purchaser, without the knowledge, consent, or agreement of your orator, was guilty of a gross breach of trust, and an intent to defraud your orator in the premises. All which actings, doings, and pretences, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless by the strict rules of the common law, and can only have relief in a court of equity. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, as by the note here under written he is required to answer, that is to say:

1. Whether he was not appointed the agent of the plaintiff, and did accept said appointment, and publish an advertisement in the Mobile Commercial Register to that effect, and inform the plaintiff thereof, by letter bearing date the 30th of April, 1828, as in said bill is set forth?

2. Whether a promissory note, made by the late Stephen Chandler, and secured by a mortgage, as in said bill, folios 3 and 4, is set forth, was not one of the claims put into the hands of the defendant by the plaintiff, and which he was authorized by said appointment to collect?

3. Whether he did not act in the foreclosure of said Chandler mortgage as your orator's agent?

4. Whether he did not, at the sale of said property under the decree of foreclosure, acknowledge, that he was the agent of the plaintiff in that suit, and would bid it in for said plaintiff?

5. Whether he did not, after said sale, request the clerk of the court to make the deed to him, saying he intended to convey it to the plaintiff immediately; or use words to that effect?

6. Whether the conveyance of said lot to him, the defendant, was

not made by the clerk in consequence of such request and statement?

7. Whether he did not afterwards acknowledge that he bought the said lot for your orator, and merely as your orator's agent?

8. And whether he did not afterwards, at the request of William M. Garrow, esq., for a deed of said lot to the plaintiff, refuse to make such deed or conveyance?

9. Whether the account rendered by him to your orator in Boston, in June, 1835, did not contain a credit of seventy-two dollars, as the entire proceeds of said Chandler lot and claim; and whether said item was not excluded from the settlement then and there made, to be adjusted and settled at another time?

10. Whether the said Chandler lot and claim was not left out of the said settlement made in June, 1835, on the ground that your orator was not informed how the same had been managed or settled by his said agent in Mobile; and whether the defendant did not promise the plaintiff to make him a full and true statement of the whole matter immediately after the above named settlement; and whether he ever did make him such statement?

11. Whether the defendant and plaintiff ever had any other settlement of the matters of said agency, or any of them, than that referred to, made in Boston in June, 1835?

12. Whether the said Chandler lot and claim ever has been stated, adjusted, or settled, between the said defendant and plaintiff, or any other persons on their behalf?

13. Whether the said defendant, at the time of said settlement in June, 1835, in Boston, had not the sum of six hundred dollars, or upwards, which he had received for the said Chandler lot?

14. Whether the said defendant had not, at the time said Chandler lot and mortgage was foreclosed and sold, and purchased in by him, and from that time until the settlement in Boston, of June, 1835, more than five hundred dollars in hand belonging to the plaintiff, besides what the defendant had received from the sale of said Chandler lot?

15. Whether the defendant has not in his possession, or under his control, the account, or a counter part thereof, settled between him and the plaintiff in Boston, June, 1835?

16. And that he, the defendant, may particularly set forth and shew in what manner he has used the money received by him from the sale of said Chandler lot; and what profit and increase he has made by the use of it; and in what the same is now invested?

17. Whether the annexed schedule, marked C, does not contain true copies of the original letters received by him from the plaintiff, and now in his possession, or under his control; and whether he ever answered said letters, or any of them?

18. Whether the defendant ever wrote the plaintiff upon any of the matters of his said agency, subsequent to his letter of the thirteenth of April, eighteen hundred and twenty-eight, referred to in this bill in schedule "A"?

And that it may be referred to the master to compute and report the

amount found due your orator by the foreclosure decree in the case of said Stephen Chandler mortgage, foreclosed as aforesaid, together with the interest thereon; and also to compute and report the value of said mortgaged lot; and also to compute and report the value of the same lot at the time it was sold and conveyed by the defendant to Samuel P. Bullard as aforesaid; and that the defendant may be decreed to pay to your orator, either the amount of said foreclosure decree and interest, or the value of said lot of land, or the amount received by the defendant from the sale thereof to Bullard, if the same were sold for its fair and full value, with all the profits and increase since made by the use of such money, or legal interest thereon, without any deduction of commissions for agency. And that your orator may have such further relief, or such other relief, as the nature of his case may require, and shall be agreeable to equity, may it please your honors to grant to your orator the writ of subpœna of the United States of America, to be directed to the said Henry V. Chamberlain, commanding him, by a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and abide such order and decree therein, as shall be agreeable to equity and good conscience.

K. B. SEWALL,
Sol. and of counsel for compl't.

NOTE.—The defendant is required to answer the foregoing interrogatories, numbered, respectively, from one to eighteen, both inclusive.

K. B. SEWALL,
Sol. and of counsel for compl't.

A.

MOBILE, *April 30th*, 1828.

Mr. STEPHEN SEWALL.

DEAR SIR: Your several favors of the 4th Feb'y, 14th Feb'y, 25th Feb'y, do. do. March 10th, March 24th, were all received, and their contents attended to. I accepted the power of attorney you enclosed me, as you may have seen by an advertisement in the Mobile Commercial Register. Your claims against Chandler & Broughton appear to be good, &c. Yours, &c.

(Signed) HENRY B. CHAMBERLAIN.

Schedule C.

BOSTON, *Feb'y 25th*, 1828.

HENRY V. CHAMBERLAIN, esq.

DEAR SIR: This morning I received a letter from our friend A. W. Gordon, esq., informing me of some difficulties that are about to arise respecting my wharf property sold to him. He thinks I had better go to Mobile, thinking I might make some arrangement with the city authorities, or authorize some one to act for me. I am now happy to say,

that I wrote you on the 14th instant, enclosing a power of attorney to you, revoking all former powers, &c., and I now therefore hope you will accept the trust. I wish you to call on Mr. Gordon, who will state all the particulars (if you are not already in the possession of them) respecting my wharf lot. I wish you to see him before you say or do any thing in the business. I am without advices from you since yours of the 12th ult. I hope you will get early possession of the Fort lot sold Chandler. In case you decline accepting my agency, and have written me before this letter comes to hand, I shall not appoint another until I hear from you after receipt of this. But I do not expect you will decline, and hope you will not. My respects to your family, and believe me your friend.

STEPHEN SEWALL.

BOSTON, *March 10th*, 1828.

H. V. CHAMBERLAIN, esq.

DEAR SIR: I am without any favor from you since yours dated 12th January, advising the receipt of the demand against S. H. Garrow. My object at this time in writing you is, particularly, to request you to take possession of the securities of mine that may be in the hands of Cousin Moses' agent, or any one else. I understand he is married in New York, therefore I do not know as he will ever return to Mobile again or not. I hope you will accept my appointment of attorney for me, and use your exertions to secure some of my debts there, viz, that due from S. Chandler, S. Broughton, Wm. Foster, and the city. Please let me hear from you as often as necessary. If my pew in the Protestant church is still unsold, you will please sell it for the most you can get for it.

With respects, &c.

STEPHEN SEWALL.

BOSTON, *June 11th*, 1828.

H. V. CHAMBERLAIN, esq.

DEAR SIR: Your esteemed favor of 30th April I received yesterday, and particularly noted its contents. I wish you to get possession of the lot sold Chandler. I enclose you an order on Moses' assignee for the property of mine he holds. Hoping to hear from you as often as convenient, I remain your friend.

STEPHEN SEWALL.

BOSTON, *June 12th*, 1828.

Mr. RUFUS SEWALL, *assignee to Moses Sewall.*

SIR: You will please deliver over to Henry V. Chamberlain, esq., all notes of hand, moneys, securities, books, papers of every name and nature, belonging to me, which you have in your possession, particularly a note and mortgage given Moses Sewall by Stephen Chandler, for a lot of ground in the city of Mobile; a note signed Wm. Foster, for 413 $\frac{48}{100}$ dollars; a note signed by Saml. Broughton, for 626 $\frac{21}{100}$

dollars; all of which belong to me; together with any other debts, &c. in your hands, belonging to me, and much oblige, yours, &c.

STEPHEN SEWALL.

Schedule C.

WINTHROP, *Nov. 28th*, 1838.

HENRY V. CHAMBERLAIN, esq.

DEAR SIR: Immediately after my return from Boston, at which place I saw you, I wrote our friend, Mr. Garrow, the substance of our conversation in regard to the purchase of my Stephen Chandler claim, &c., since which I am without any favor from him. Perhaps his business, at this time, prevents his attention to mine. I thought I would address a line to you, and inquire what you are willing to give me for my claim against Chandler and the lot. You remarked that you obtained judgment for about $2,000. I think I paid for the lot $480, in 1821 or '2; the int., payable annually, would be $1,776; this would make the gross sum $2,256, about the sum you named. I want to get as near the amount I paid, and int., as I ought to have. Now, will you drop me a line, so soon as you receive this, and say how much you will give me for my quit claim to all right, title, and interest, in the property, and the demand against Chandler—payment, say your note, endorsed by your son Henry, in 1, 2, and three years, or 1, 3, and 5 years, with interest annually. Your early attention to this will greatly oblige me. Please make my respects to Mrs. C., your sister, and son.

Yours, respectfully, STEPHEN SEWALL.

WINTHROP, *July 5th*, 1839.

HENRY V. CHAMBERLAIN, esq.

DEAR SIR: I wrote you under date 28th Nov. last, since which I am without any favor from you. Permit me to call your attention to that letter, as it was on the subject of the Stephen Chandler demand, as I feel desirous to have that old matter settled. I would again ask you to make inquiry, and ascertain the worth of the demand vs. Chandler, and make me an offer for the *lot and demand*. Shall I have the pleasure of seeing you in Maine this summer? Will you please give me early answer to this, and greatly oblige,

Yours, respectfully, STEP'N SEWALL.

WINTHROP, *Nov.* 8, 1841.

HENRY V. CHAMBERLAIN, esq.

DEAR SIR: I have for some time been expecting to hear from you on the subject of the Chandler or Fort lot, so called, as you promised when I last saw you, you would consider the value of my claim or judgment against, together with the lot, and make me an offer for the whole, &c., since which I am without any advice from you on the subject. Now, friend Chamberlain, I certainly ought to have my pay for the lot in some shape or other. I paid 450 dollars for the lot about 20

years ago. From Judge Wm. M. Garrow's letter to me, dated March 24, 1833, I make the following extract, to show or remind you of my equitable claims on you for the transfer of the lot to me, or the real value of the same: "Mr. Chamberlain tells me that the lot you sold to Capt. Chandler was mortgaged to you for the purchase money. He says the mortgage was foreclosed one or two years ago, and the lot sold under a decree of the court. He, Chamberlain, bought it in his own name. He says that you may either let it remain, to be paying you the amount at which he bid it off, or you may consider it as bought for you, and he will convey it to you. I think the latter course will be preferable for you. As it was sold for less than the original purchase money or its value, Chandler will still be indebted to you for the difference between the sum for which you sold it to him and the sum for which it was sold under the decree." Now, I want the land, or the value of it, and I must urge the immediate adjustment of this business. I wrote your son on the subject a long time ago, but rec'd no answer; therefore presume he does not wish to attend to it. I shall therefore perhaps be under the necessity of employing another attorney to bring this business to a close, unless you and I can settle it without recourse to a legal adjustment or process; and why can we not do it? Will you, on receipt of this, give me a full statement of the business, viz., the amount it sold for, the amount judgment obtained against Chandler, and state what you will give me for lot, demand, &c. Your early attention to this long delayed matter is requested.

Yours, respectfully, STEP'N SEWALL.

Filed 8th Feb'y, 1843, and subpœna issued.

D. FILES, *Clerk.*

Whereupon, afterwards, to wit, on the 9th day of February, in the year of our Lord one thousand eight hundred forty-three, a writ of subpœna was issued in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA:

Circuit court of the United States for the ninth judicial circuit and southern district of Alabama. The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Henry V. Chamberlain, who is a citizen of the State of Alabama, to be and appear before the hon. the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of March next, to answer unto the bill of complaint filed on the 8th day of February, A. D. 1843, by Stephen Sewall, who is a citizen of the State of Maine. Herein fail not, and have you then and there this writ.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this fourth Monday of November, in the year of our Lord one thousand eight hun-

dred and forty-two. Issued the ninth day of February, in the year of our Lord one thousand eight hundred and forty-three.

Attest: D. FILES,
Clerk C. C. southern district of Alabama.

Acknowledge myself security for costs, at the instance of the plaintiff, in the above suit.

GORHAM DAVENPORT.

Received 8th February, '43, and executed 14th February, 1843.
WM. ARMISTEAD, *U. S. Marshal.*
By C. CUYLER, *D. M.*

And afterwards, to wit, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-three, being a day of a term of said court begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-four, being a day of a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-three, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and forty-four, the said respondent filed in said court the following answer, to wit:

THE UNITED STATES OF AMERICA:

The State of Alabama, county of Mobile, circuit court of the United States. Term. To the honorable the judges of the circuit court of the United States for the southern district of Alabama, exercising chancery powers. The answer of Henry V. Chamberlain to the bill of complaint of Stephen Sewall, complainant:

This defendant, now, and at all times heretofore, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections, and insufficiencies, in the said complainant's said bill of complaint contained, for answer thereto, or to so much, and to such parts thereof, as he, this defendant, is advised is material for him, this defendant, to make answer unto, he,

this defendant, answering, saith, that he presumes that the copy of the letter annexed to said complainant's bill of complaint, marked A, is a true copy of the letter written by the defendant to the complainant, but that he, defendant, did not keep any copy thereof. That he, this defendant, accepted of a general power of attorney from the said Stephen Sewall for the transaction of some business in the State of Alabama, as is charged in said complainant's bill of complaint, and that from that time until about the year 1832 he did bestow much care and attention in and about the business of him, the said Stephen Sewall; that the said business was difficult of settlement, and such as the said Stephen Sewall was unable to arrange and settle during his residence in Alabama; that the said Stephen Sewall resided at the North, in the State of Massachusetts or Maine, at that time, and previously; that the said Stephen Sewall had previously appointed *and* Moses Sewall, a relation of said Stephen, his agent, who acted as such agent until the complainant became dissatisfied with his acts, and then was very anxious that the defendant should become his agent, who reluctantly consented to do so after much persuasion; that the defendant has made examination and thorough search for the power of attorney which was sent to him by said Stephen Sewall, but has not been able to find it, nor does he recollect the precise terms in which it was worded.

The said defendant, further answering, says, that on or about the day of , he received from the said Moses Sewall a certain note belonging to said Stephen Sewall, which had been executed by one Stephen Chandler; which note was for the same sum, and which bore the same date, as stated in the complainant's bill of complaint; and also a mortgage deed, as set forth in the said bill of complaint, without any special instructions as to the course that should be pursued in the collection of the same; that said lot of ground, described in said bill of complaint, had a front on St. Emanuel street of fifty feet, and a depth westwardly of eighty feet. That at the time the said note and mortgage were so placed in the hands of the defendant, the said Stephen Chandler was utterly insolvent, and that he could not pay any of his debts, or any part of them, as his property had then been entirely exhausted; and that he remained so insolvent, and unable to pay his debts, up to the time of his death, which occurred some time in the month of March, in the year of our Lord 1840. That said Chandler had never given to said Sewall any other security for the payment of the said note and interest, and that the said lot of ground, at the time it was sold to pay the decree hereinafter mentioned, was not worth more than dollars, under the circumstances of the case; that it had deteriorated in value after the said mortgage deed was executed, and between that time and the time of such sale. That there was neither fence nor wall enclosing the same at the time it was sold, and there was no pavement in front of the lot upon the side walk; and that the said lot did not, for some time after such sale, increase any in value, except by the improvements placed upon and around it by the said defendant. That, in order to collect as much of the said debt as possible,

your orator employed one Henry Hitchcock, esq., an able solicitor and attorney at law, with instructions to him to use such means as he deemed advisable, in order to collect the sum due to said Stephen Sewall. That said Hitchcock did not sue at law upon the note, for the reason that said Chandler was worth nothing, and that it would only be incurring costs to bring a suit; but that he filed a bill, upon the chancery side of the district court of the United States, at Mobile, for the foreclosure of said mortgage, and obtained a decree for the same, to the amount of said note and interest, against said Chandler; and the said mortgaged premises were ordered to be sold, in default of the payment of said sum. That the premises described in said mortgage deed were advertised and sold by the then acting master in chancery, on or about the 15th day of March, 1820, for the sum of one hundred and fifty dollars; that the defendant was not present at the sale of the lot of ground, nor did he then, or at any time before, apprise any person whomsoever that he intended to buy in the said property for the said Stephen Sewall, or for any other person. That the said property was bid off by one Henry Chamberlain, in the name of the defendant, without any instructions from him, the defendant, as to price, or in whose name the same should be purchased, or that it should be purchased at all. That a short time after the said sale had taken place, the said Henry Chamberlain informed the defendant that he had purchased the said lot of ground for the sum of one hundred and fifty dollars, in the name of the defendant. And further, that he is informed by the said Henry Chamberlain, and believes it to be true, that he did not represent to the bystanders, at said sale, that he was about to purchase said property for said Stephen Sewall, or for any other person; but that, as your orator is informed, the said sale was fair and open, and that there were several bystanders there, some of whom bid upon the property. That this defendant was satisfied with the purchase of said lot in his name, and accordingly afterwards took a deed for the same from the acting master in chancery, and then paid to him the said master the amount of costs charged in the said case, which was $58 74, besides deed $5, and paid to attorney tax fee, 15 dollars.

That at the time said lot was so sold by the acting master in chancery, the same, under the circumstances of the case, was not considered worth more than three or four hundred dollars; it was assessed at $400 in 1832 and 1833.

And further answering, your respondent says, that he paid to Henry Hitchcock, esq., for his services in endeavoring to collect the money on said note, and for his advice and labor, &c., in obtaining the decree of foreclosure, &c., the sum of about fifty dollars, though he has lost the receipt therefor. And further, that the said defendant expended a further large sum of money in and about the fencing in of the said lot of ground after he had purchased it, with a good plain and substantial fence, in accordance with the provisions and requirements of an act of the legislature of the State of Alabama, approved on the 15th January, 1831, entitled An act to alter and amend the charter of incorporation of

the city of Mobile, and in conformity with the requirements of the mayor and aldermen of said city of Mobile; the cost of building which said fence, and the materials used about the same, was fifty dollars. And in like conformity with the requirements of the said mayor and aldermen, he, the said defendant, built and constructed a side walk of earth and bricks in front of said lot, the cost of which was thirty-five dollars. And further, that he, the said defendant, paid out State, county, and city taxes on said lot of ground, which had been assessed thereupon, to the amount of eleven or twelve dollars, for the years 1830, 1831, 1832, 1833, and 1834. That about an equal amount was paid each of the before named years for taxes; for all which bills of expenses incurred on account of said lot, the defendant asks leave to refer to such vouchers as he has, and to other proofs, much of the evidence having been lost by time and accident.

And further, the said defendant answering, says, that the said lot of ground, at the time that he made purchase of it, was considered of less value, for the reason that one Joseph Wiswall held a mortgage over it, which was executed after the said mortgage was executed to said Sewall, and which said mortgage was afterwards foreclosed in the court of chancery of Mobile county, State of Alabama; and that although the said mortgage was pending *and* said lot at the time that the said Sewall mortgage was being foreclosed, that yet said Wiswall was not made a party to said suit of Sewall vs. Chandler, because, as defendant supposes, the existence of said mortgage was not then known.

And further answering, the said defendant says, and expressly charges, that at the time the said deed was executed to him, the said lot of ground was entirely unimproved; that there were no buildings upon the lot, and that there was neither fence nor wall around the lot, and consequently that it could not be rented for any thing whatever; and that even after the fences were built by the defendants, that the vacant lot, situate in the lower and unfrequented part of the city, could not be rented for any thing whatever.

And further answering, the said defendant says, that it is true that, on or about the 8th day of September, in the year of our Lord one thousand eight hundred and thirty-four, he conveyed the said lot of ground in fee simple, as he supposed he had the right and authority to do, to one Samuel P. Bullard, for the sum of six hundred dollars, payable as follows, viz., that between the time of the purchase by the defendant and the time that said sale was made to said Bullard, the value of real estate had increased considerably—about one-third; that at the time said mortgage deed was executed by the said Stephen Chandler to the said Stephen Sewall, in the year 1824, said lot of ground was not worth the sum of $485, nor near that amount; that said Stephen Sewall paid for said lot only four hundred dollars in the year 1822, and that the deed he received calls for more land than he sold to Chandler; and moreover, that between the year 1824 and the year 1830, property in the lower part of the city of Mobile, where this lot was situate, had fallen much in value; that the business of the city tended upward at

that time, where most of the buildings were then constructed, and where the principal part of the mercantile business was then done.

And further answering, this deponent states, that at the time he made sale of the said lot of ground to the said Samuel P. Bullard, it was not worth more than six hundred dollars, with a clear title, and that sum was as much as could have been obtained for it. That after the said purchase was made by the said Bullard, he entered into the possession of the lot, and afterwards made valuable improvements therein, by constructing buildings thereon, and otherwise.

And this defendant, further answering, says, that it is true that he met the said Stephen Sewall several times in the month of May and June, in the year 1835, in the city of Boston; and that he then had a full and perfect settlement with him of all accounts between them, and of all his actings and doings as agent for him, said Stephen, up to that said time, except as hereinafter stated, when the said defendant paid over to him, said Stephen Sewall, the sum of $820 70; and their settlement was amicable and just. That in the account which he, this defendant, then rendered to the said Stephen Sewall, he, this defendant, acknowledged that there was due to him, the said Stephen, the sum of $72, or thereabouts, on account of this lot of ground; which was, according to the estimate of this defendant, as much as was then due to the said Stephen Sewall on that said account; but that the said Stephen then requested that this matter relating to the lot should be open for some future adjustment, and that sum so allowed on account of the lot was accordingly struck from the account, and was not embraced in the settlement. This defendant then offered to pay said Sewall that said amount, but he refused to receive it.

And this defendant expressly charges and insists, that he never has since that said time, to wit, in the month of June, in the year of our Lord one thousand eight hundred and thirty-five, in any way whatever, admitted or acknowledged that he owed to, or was indebted on this account, or on any other account, to the said Stephen Sewall in any amount whatever; and he, the said defendant, insists upon the statute of limitations in this behalf. And he, this defendant, pleads in bar, that at no time did any cause of action or suit accrue or arise within six years before the filing of the said complainant's bill of complaint; during all which term of six years, and upwards, he, the said defendant, was a permanent resident of the city of Mobile, in the State of Alabama, and liable to be sued. And further, the said defendant pleads in bar, that at no time, for and during the six years next preceding the time of filing the said complainant's bill of complaint, did he promise or undertake to pay the said amount in the said complainant's bill of complaint charged to be due and owing to him by the defendant, or to pay any other amount whatever to the complainant, although defendant was at all times liable to be sued.

And further answering, this defendant alleges, that the said Stephen Sewall was well aware that the said Stephen Chandler was insolvent,

and unable to pay any thing from and after the year 1828, up to the time of his death; that, in the years 1823, 1824, 1825, he held a large amount of property in his own name, and had considerable credit, though he lived extravagantly and made injudicious bargains. And further the said defendant admits, that at the time of the said settlement in the year 1835, at Boston, he held in his hands moneys which he had from time to time received over and above the amount which he had expended for said Sewall, but that this was fully and entirely settled and discharged at that said time and place; and further, that the said defendant has at no time since the said month of June, in the year 1835, had any dealings with said Sewall of any kind whatever, nor transacted any business for him.

And further answering, this defendant says, that he has not at any time since the month of June, in the year of our Lord 1832, acted as the agent or attorney in fact of the said Stephen Sewall; that the said Sewall then revoked and annulled the power of attorney which this defendant held, and appointed the honorable William M. Garrow his agent and attorney. And said Garrow acted as such attorney and agent from that time, for two or three years thence next forward; and that after the said Wm. M. Garrow ceased to act in such capacity, one Gorham Davenport, esq., was the acting agent of said Stephen, and so continued for a long time; that this defendant has at no time refused to explain to said Sewall and to his agents, the situation of the said "Chandler lot of ground." And the said defendant, answering the interrogatories to the amendment to the bill of the complainant:

1. Makes answer to the first interrogatory, that he did accept, publish, and inform complainant.

2. To the second, that the note and mortgage were handed to him by Moses Sewall.

3. To the 3d, that he did promise that the said suit should be instituted for the foreclosure, as complainant's agent.

4th. To the 4th, he answers, that he was not present at the sale, and made no acknowledgment or statement.

5. To the 5th, that he did take the deed from the clerk, but never within his recollection said that he intended to convey to complainant, or any thing to that effect.

6. The conveyance was made by the clerk to him.

7. To the 7th, he has never within his knowledge, remembrance, or belief, said that he bought the lot for the complainant merely as his agent.

8. He answers to the 8th, that he does not remember that William M. Garrow, esq., ever requested him to make a deed of said lot to complainant, or that he ever refused so to do.

9. To the 9th, he answers, that his account produced to said Sewall in 1835, did contain a credit of $72, or thereabouts, on account of said lot, but that said item was struck off as explained in this answer.

10. To the 10th, he answers, that said "Chandler claim" was not settled in said settlement had in June, 1835, but for what reason he,

said Sewall, would not settle it, he does not know. The defendant had previously given said Sewall and his agent all the information they required regarding said claims, and the defendant did not undertake to inform said Sewall more particularly thereon.

11. To the 11th, he answers, the complainant and the defendant never had any other settlement than that in June, 1835; that defendant has never had any transaction with complainant since that time.

12. That there has been no further settlement and adjustment of said Chandler claim, than what is stated in this answer.

13. To the 13th, he answers, that he, the defendant, did not have $600 or upwards, in 1835, which he had recovered for said "Chandler lot," for he had paid out large amounts of moneys on that account, as stated in this answer.

14. To the 14th, he answers, that at the time said lot was foreclosed and purchased, he had not more than $500 belonging to the complainants, which he retained till 1835, as far as he can recollect.

15. To the 15th, he answers, that he has not in his possession the account or a counterpart thereof; if he had one it is lost or mislaid, so he has not been able to find it.

16. To the 16th, he answers, that he cannot state what use he made of the money received for said lot, or that he has made any profit or increase on the same; he had in 1835, (June,) and previously, more than a sufficiency to pay said complainant all he owed him, and he, the defendant, then tendered to said Sewall all he thought due him.

17. To the 17th, he answers, that he has read the letter referred to in schedule marked C, dated November 8th, 1841, in his possession; that the others, if received, have been lost by time or accident, and he does not know what their contents were.

18. To the 18th, he answers, that he has not written to said Stephen Sewall often; he has kept no copy of his letters, and does not know how many he has written, and having fully answered all charges contained in complainant's bill, and given as full a statement as he is able to give, he prays to be discharged with his costs. And further, the defendant asks leave to refer to the letter of said Stephen Sewall, dated 6th June, 1832, whereby he revoked the power of attorney made to defendant, and appointed Wm. M. Garrow his agent.

ED. S. DARGAN,
Sol. for dft.

THE STATE OF ALABAMA, *county of Mobile*.

Personally came and appeared before me, William Crawford, one of the judges of the United States circuit court for the southern district of Alabama, Henry V. Chamberlain, who made oath that the allegations contained in the foregoing answer are true and correct both in substance and in fact.

H. V. CHAMBERLAIN.

Sworn to and subscribed before me, this 27th February, 1844.

WM. CRAWFORD,
Judge of the United States for the southern district of Alabama.

Filed 27th February, 1844.

D. FILES, *Clerk*.

And afterwards, to wit, on the twenty-ninth day of February, in the year of our Lord one thousand eight hundred and forty-four, the said complainant filed in said court the following replication, to wit:

Circuit court of the United States for the southern district of Alabama.

The replication of the complainant to the answer of the defendant to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.

K. B. SEWALL,
Complainant's solr.

Filed 29th Febuary, 1844. D. FILES, *Clerk*.

Circuit court of the United States for the southern district of Alabama.

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

SOUTHERN DISTRICT OF ALABAMA, *ss:*

On this twenty-seventh day of November, A. D. eighteen hundred and forty-three, before me, David Files, clerk of the circuit court of the United States, for the southern district of Alabama, personally appeared Kiah B. Sewall, and being duly sworn, deposes and says, that he is informed of the facts and circumstances of the plaintiff's case; that Moses Sewall is a material witness for the plaintiff, and a single witness to a fact.

K. B. SEWALL.

Subscribed and sworn before me, the day and year above written.

DAVID FILES,
Clk. C. C. So. D. Ala.

Circuit court of the United States for the 5th circuit, and southern district of Alabama.

STEPHEN SEWALL
vs.
HENRY CHAMBERLAIN.

Let a commission issue in the above entitled cause to Peleg Sprague,

Theophilus P. Chandler, and Peleg W. Chandler, authorizing them, or either of them, to take the deposition of Moses Sewall, of Boston, de bene esse, at the instance of the complainant, to be read in the above entitled cause.

WM. CRAWFORD, *Judge*.

August 16*th*, 1843.

Circuit court of the United States for the southern district of Alabama.

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

SIR: You will please take notice, that on the eleventh day of December next, between the hours of 9 o'clock A. M. and 6 o'clock P. M., at the office of Theophilus P. Chandler, esq., in Boston, Massachusetts, I shall proceed to take the deposition of Moses Sewall, of Boston, de bene esse, to be read on the part of the plaintiff in the above entitled cause, before Peleg Sprague, Theophilus P. Chandler, and Peleg W. Chandler, commissioners, or either of them, and that the taking of said deposition will be continued, if necessary, from day to day, at said place, until the same shall be finished; dated November 27, 1843.

Yours, &c.,
K. B. SEWALL,
Solicitor of counsel for complainant.

To H. V. CHAMBERLAIN, esq., the defendant.

Received 27th November, 1843, and executed 29th November, 1843.
WILLIAM ARMISTEAD, *U. S. M.*
By C. CUYLER, *D. M.*

CIRCUIT COURT OF THE UNITED STATES,
For the fifth judicial circuit, southern district of Alabama.

The President of the United States to Peleg Sprague, Theophilus P. Chandler, and Peleg W. Chandler, greeting:

Know ye, that in *confidence* of your prudence and fidelity, you have been appointed, and by these presents you or either of you are invested with full power and authority to examine Moses Sewall on his corporal oath, as a witness in a cause depending in the circuit court of the United States, for the fifth judicial circuit, southern district of Alabama, exercising chancery jurisdiction, wherein Stephen Sewall is complainant, and Henry V. Chamberlain is respondent.

And, therefore, you are hereby commanded to cause the said Moses Sewall to come before you or either of you, at the office of Theophilus P. Chandler, esq., in the city of Boston, on the 11th day of December, A. D. 1843, between the hours of 9 o'clock, A. M., and 6, P. M., and then and there, and from day to day thereafter, if necessary, to examine him on oath, de bene esse, touching his knowledge of the matters concerning said cause. And that you take such examination, and re-

duce the same to writing, and return the same annexed to this writ, closed up under your seals, or the seal of either of you, into the said circuit court, before the judges thereof, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this 4th Monday of November, A. D. 1843.

[L. S.]

Issued the 27th day of November, A. D. 1843.

Attest: DAVID FILES,
Clerk C. C. So. district Ala.

I, Moses Sewall, of the city of Boston, in the Commonwealth of Massachusetts, having been first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, according to law, depose and say, that in the month of June, in the year 1835, I was requested by Mr. Stephen Sewall to go to the Tremont House, in Boston, to see Judge Chamberlain, of Mobile, then on a visit to Boston; we went there, and saw the Judge, and there was a proposition made by either the Judge or Stephen Sewall, I do not recollect which, to settle their accounts. The Judge produced his account, which not being entirely satisfactory to Mr. S. Sewall, he, Sewall, requested me to make out the account, taking the items, so far as he was satisfied with them. I did so, and in the copy of the amount which is in my handwriting, there is no mention of the amount received by Chamberlain for the Chandler or Fort Charlotte lot. That matter was not embraced in the amount as then actually settled by the parties. The annexed paper is a true and accurate copy of the account as it was there settled by Chamberlain and the said Stephen Sewall. This copy is in my handwriting, and was made upon the spot at the time of the settlement.

MOSES SEWALL.

UNITED STATES OF AMERICA,
District of Massachusetts, city of Boston, ss:

OFFICE OF THEOPHILUS P. CHANDLER,
December 11, 1843, *at* 12 *o'clock, M.*

Then and there, by virtue of the annexed commission, personally appeared the above named Moses Sewall, who being first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, gave the foregoing deposition by him subscribed in my presence, and by me reduced to writing in his presence. Taken by me by virtue of the commission hereto annexed. No person being present during the examination. Whereupon I, one of the commissioners in the commissioner named here, return to the court in the said commission named this deposition, with the said commission duly executed.

THEOPHILUS P. CHANDLER.

Dr.	H. V. Chamberlain, esq., in account with S. Sewall.		Cr.
1837. Dec. 5.	For cash received, S. H. Garrow, and interest from 25th June, to date		$424 65
1828. April 28.	Cash received, R. H. Croswell		209 00
1829. April 1.	Damages paid on bill drawn on him, returned protested		16 00
	Interest on $424 65, from 5th Dec., 1827, to June, 1835, 7 years 6 months	$254 78	
	Interest on $209, from 28th April, 1828, to June, 1835, 7 years 1 month	118 43	
	Interest on $16, from 1st April, 1829, to June, 1835, 6 years 2 months	5 92	379 13
			1,028 78
			208 08
			820 70
1828. April 28.	By his services attending sale lot on St. Louis street		10 00
	Cash paid Battille & Townsend, revocation power of attorney		4 50
	Time and expenses to Cahawba, to secure claim against Foster		38 19
March, 1830.	Attending claim H. Krebs and A. W. Gordon		25 00
	Time and expenses to Canton, Wilcox Coy in suit against R. H. Grugg		23 49
	5 per cent. commission on $633 65, collected from Grunn & Croswell		31 68
	Sundry postages		4 50
	Balance due, interest on $88 87, 7 years and 1 month	$50 36	
	Interest on $48 49, 5 years and 3 months	20 36	70 72
			208 08

Published 12th March, 1844.

D. FILES, *Clerk*.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause now pending in the circuit court of the United States, for the southern district of Alabama, in equity, wherein Stephen Sewall is complainant, and Henry V. Chamberlain is defendant, under a commission to be issued out of said court, directed to Addison Fox and Julius A. Martineau, esquires, commissioners, on the part of the said complainant.

First interrogatory. What is your name, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainant and

defendant, in the title of these interrogatories named, or either of them, and which of them; and how long have you known them, or either of them? Declare the truth.

Third interrogatory. Do you know of a suit heretofore brought in the district court of the United States, for the southern district of Alabama, in or about the year 1829 or 1830, by Stephen Sewall against Stephen Chandler, to foreclose a mortgage made by the latter to the former upon a lot of land in the city of Mobile, on the west side of St. Emanuel street, and between Theatre and Monroe streets? If yea, state the result of said suit; whether there was a decree for the said complainant Sewall, when it was obtained, and the amount; when the property was sold, by whom, who were present at the sale, the circum stances under which the sale was made, who bid off the property, an for what price.

Fourth interrogatory. Was the defendant, Chamberlain, present a said sale; was there any proposition made to adjourn the sale; if yea by whom and for what reasons, and why was said sale not adjourned State all the facts and circumstances that transpired at said sale between yourself and the said defendant. Declare the truth fully, &c.

Fifth interrogatory. Did you, after said sale, make a deed of said lot to the defendant, Chamberlain? If yea, state why it was so made, and what passed between you and said defendant upon the subject. Declare the truth, &c.

Sixth interrogatory. Who were the attorneys of record of the complainant Sewall in said foreclosure suit against Chandler, and whether they made any objection, because the deed had been made to said defendant? And if yea, what such objection was. State all that passed between you and said attorneys upon the subject, at the time of said transaction, or at any time afterwards. Declare, &c.

Seventh interrogatory. What was the amount of costs taxed and paid you in said foreclose suit, and by whom were they paid; and what was the nett amount of proceeds of said sale, after deducting the costs applicable to the complainant's claim, and for which the defendant Chandler was entitled to be credited on his said mortgage debt?

Eighth interrogatory. Were you employed by the complainant, as his agent, to attend to the settlement of any business of his with the defendant in Mobile? If yea, when and how were you so employed; what claims upon the defendant were you employed to settle; what were your instructions in this behalf, and did they embrace a claim for the Chandler or Fort lot, so called, for which said defendant had been acting as agent? If yea, state whether you called on the defendant for a settlement of said claim, and what conversation passed between you, and whether you effected any settlement with him; state all the particulars of your acts of agency as to said complainant's claims on said defendant, and the result thereof. Declare the truth fully, &c.

Ninth interrogatory. What statements were made by said defendant to you, when you first applied to him about the said Chandler lot, and did you then or subsequently request him to make a deed of said lot to

the complainant Sewall, and what reply did he make to such request; and was this done by you as the agent of the complainant, and at the complainant's request?

Tenth interrogatory. Look upon the letters and writings produced and shown to you at the time of your examination; were or was the same, or either, and which of them, written by you, or by whom were they respectively written; to whom were they directed and sent, or by whom received; if any of said letters were written by you, when were they so written, upon what occasion and subject?

Eleventh interrogatory. Did you ever, as agent of the complainant, call upon the defendant for a settlement of the Stephen Chandler mortgage, or Fort lot, claimed by said complainant; if yea, when and where, and how often did you call on him, and what answers did he make to you on the subject?

Twelfth interrogatory. Who succeeded you as agent of the complainant Sewall, in Mobile, and to whom did you hand over the papers in your hands relating to complainant's business; and when did this change take place, and why; declare, &c.?

Thirteenth interrogatory. Look upon the paper writing shown you at the time of your examination, marked O. Is the same a copy of a letter received by you from the complainant, bearing date the 23d of July, 1840? If yea, did you call upon the defendant, or upon Judge Garrow, upon the subject of said letter; did you answer said letter; what action was had by you in reference to the subject of said letter; declare the truth fully, &c.?

Fourteenth interrogatory. Were you ever requested, by letter or otherwise, by complainant, to call upon the defendant and effect a settlement with him of the said Chandler lot or claim, to demand a deed for said lot, or its value in money. If yea, state when you were so requested, how often, and all that you did or attempted to do in pursuance of such request, and how you were answered by the defendant.

Fifteenth interrogatory. Do you know the Chandler or Fort lot, so called, on account of which this suit is brought, situate on the west side of St. Emanuel street, between Theatre and Monroe streets, in the city of Mobile; did you know it as early as 1830; what was the condition of it then; was it enclosed, and in what manner, and by whom?

Sixteenth interrogatory. Did you know of the existence of the mortgage made by Stephen Chandler to complainant, upon the lot mentioned in the last interrogatory; did you know of its foreclosure; were you applied to by the defendant on account of it? If yea, state all that passed between yourself and the defendant in regard to said mortgage and proceeding to foreclose it. Were you present at the sale of said Chandler lot, made under said foreclosure decree? If yea, state who were present at said sale; declare the truth fully, &c.

Seventeenth interrogatory. Are you not the owner of two lots of land on the west side of St. Emanuel street, between Theatre and Monroe streets; if yea, of whom did you purchase them respectively? State particularly the time you purchased, the price paid, whether you pur-

chased on time or for cash, to whom you paid the money, the size and situation of each lot, the distance from the centre of business, and population at the time you bought. Was one of these lots known as the Chandler or Sewall lot? What is the value of the one known as the Chandler lot at the present time, without reference to the improvements made by you on it; has its intrinsic value ever been greater than it is now? How happened it that you bought this lot for a less price than the corner lot adjoining? Declare the truth fully, &c.

Eighteenth interrogatory. What was the condition of said Chandler lot when you bought it; was it enclosed; if yea, in what manner; was there a side walk in front or upon the street; if yea, what kind of side walk was, and in what condition; how long had it been built, and by whom?

Nineteenth interrogatory. Did you ever hold a mortage upon the lot described in the fifteenth interrogatory, made to you by Stephen Chandler. If yea, state whether you considered it of any and what value when it was made; whether you knew it to be subject to the mortgage made by Chandler to the complainant; whether you ever relinquished your claim to said lot in favor of complainant; if yea, when you did so, to whom, and why. If to the defendant, state all the conversation that passed between you on the subject?

Twentieth interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

K. B. SEWALL, *Complt's solr. and counsel.*

The commissioners will examine the witnesses respectively to the interrogatories against their names, as follows: David Files, 1, 2, 3, 4, 5, 6, 7, 15, and 20; Judge Garrow, 1, 2, 8, 9, 10, 11, 12, and 20; S. P. Bullard, 1, 2, 17, 18, and 20; G. Davenport, 1, 2, 14, 15, and 20; J. Wiswall, 1, 2, 15, 16, 19, and 20; K. B. Sewall, 1, 2, and 14; H. Chamberlain, 1, 2, 13, 14, and 20.

K. B. SEWALL, *Complt's solr., &c.*

Interrogatories filed by complainant this 4th March, 1844.

Attest: D. FILES, *Clerk.*

In chancery, circuit court of the United States, the southern district of Alabama:

STEPHEN SEWALL,
vs.
HENRY V. CHAMBERLAIN.

Please to take notice, that I have filed in the office of the clerk of said court interrogatories, to be administered to witnesses on the part of the complainant in the above entitled cause, to which you may file cross interrogatories if you see fit, and shall ask for a commission in pursuance of the rule. The names of the witnesses are Joseph Wiswall,

Henry Chamberlain, Gorham Davenport, David Files, William M. Garrow, Samuel P. Bullard, and Kiah B. Sewall. The commission will issue to Addison Fox, Origen Jewett, Julius A. Martineau, and Edwin Rust, esquires, or such of them as the judge of said court may appoint. Dated March 4th, 1841.

Yours, &c.,

K. B. SEWALL, *Compl'ts solr.*

To E. S DARGAN, esq., *Deft's counsel.*

Served on me to-day, 4th March, 1844.

E. S. DARGAN.

Circuit court of the United States for the southern district of Ala.

STEPHEN SEWALL, vs. HENRY V. CHAMBERLAIN. } In equity.

It appearing to the satisfaction of the court that the above cause is at issue, and that the plaintiff has filed in the clerk's office, in said cause, interrogatories, to be administered to Joseph Wiswall, Henry Chamberlain, Gorham Davenport, David Files, William M. Garrow, Samuel P. Bullard, and K. B. Sewall, witnesses on the part of said plaintiff, of which defendant has had notice, on application of plaintiff's solicitor, let a commission issue, under the rule, to Addison Fox, Julius A. Martineau, Origen S. Jewett, and Edwin Rust, esqs., or either of them, to take the depositions of said witnesses.

WM. CRAWFORD, *Judge*.

Circuit court of the United States for the fifth judicial circuit of the United States, southern district of Alabama; the President of the United States to Addison Fox, Julius A. Martineau, Origen S. Jewett, and Edwin Rust, esquires, greeting:

Know ye, in *confidence* of your prudence and fidelity, you have been appointed commissioners, and, by these presents, you, or any one or more of you, are invested with full power and authority to examine Joseph Wiswall, Henry Chamberlain, Gorham Davenport, David Files, William M. Garrow, Samuel P. Bullard, and Kiah B. Sewall, upon their corporal oaths, as witness in a cause depending in the circuit court of the United States for the fifth judicial circuit, southern district of Alabama, upon the equity side of said court, wherein Stephen Sewall is complainant and Henry V. Chamberlain is defendant, on the part of the said complainant, upon interrogatories annexed to this commission. And, therefore, you are hereby commanded to cause the said witnesses to come before you, or some one or more of you, and that you take such examination, reduce the same to writing, and return the same, annexed to this writ, closed upon under your seals, or the seal of some one or more of you, into the said circuit court, before the judges thereof, with all convenient speed.

Witness the Hon. Roger B. Taney, chief justice of the Supreme

Court of the United States, and the seal of said circuit court, this fourteenth day of March, A. D. 1844.

Issued the 14th March, A. D. 1844.

Attest: DAVID FILES, *C. C. C. S. D. Ala.*

STEPHEN SEWALL, Compl't,
vs.
HENRY V. CHAMBERLAIN, Deft.

Pending on the chancery side of the United States circuit court for the fifth judicial circuit and southern district of Alabama. Depositions of witnesses produced, sworn, and examined, on behalf of the complainant, in the above entitled suit, before Addison Fox, commissioner, under and by virtue of a commission issuing out of the court aforesaid, and hereunto annexed. The said examination being taken at the office of said commission, No. 54, Royal street, Mobile.

David Files, a witness, being first duly cautioned, and sworn, and examined, in answer to the interrogatories to him propounded, doth depose and say:

In answer to the first interrogatory. My name is David Files; occupation, that of a clerk of the United States circuit and district courts for the southern district of Alabama; residence, Mobile.

2. To the second interrogatory. I do not know the compl't, Sewall; but I know the defendant, Chamberlain, and have known him since 1826 or '7.

3. To the third interrogatory. I do. On 15th April, 1829, one Stephen Sewall filed his bill in chancery in the district court, of which I was clerk, to foreclose a mortgage upon a certain lot of land on St. Emanuel street, between Theatre and Monroe streets; in which cause a decree was pronounced at December term, 1829. The amount called for in the decree was six hundred and seventy dollars and ninety-one cents, (670 91,) besides costs. In pursuance of said decree, I, as master in chancery, advertised the property for sale on Monday, 15th March, 1830, in front of the court house. On said day I attended at the place of sale for the purpose of selling the same. That, in consequence of there being very few bidders at the place advertised, I adjourned said sale from the court house, on Royal street, to the pavement in front of the premises. When deponent went to the premises there were still but few bidders. I then proposed postponing said sale to another day, in consequence of the weather, which was rainy, and also for want of bidders. Henry V. Chamberlain was present on the premises, and instructed affiant to go on with the sale, stating that he was the agent of the compl't, and would buy in the property. I accordingly did proceed to offer the same, and did sell it to said Henry V. Chamberlain for the sum of one hundred and fifty dollars. I do not recollect by name any one other than Chamberlain as being present, and I remember that he was there, because he controlled the sale.

4. To the fourth interrogatory. Chamberlain was at the sale, as I have already answered in the last interrogatory. My answer to the

whole of the present interrogatory is embraced in my answer to the last one.

5. To the 5th interrogatory. I do not remember the date of my deed to Mr. Chamberlain, but remember of having made one to him. Before said deed was made out I enquired of him how he would have it drawn. He instructed me to make it to himself. About the time of making the deed Chamberlain paid to deponent the sum of one hundred and fifty dollars. On the 12th May, 1830, deponent paid to Hitchcock & Hall, compl'ts' solicitors in the foreclosure, the sum of $76 26, being balance due compl'ts after deducting costs, expenses, and solicitor's tax fee. Mr. Chamberlain alleged, as a reason for taking the deed to himself, that it would be more convenient for him to make his settlement in that way.

6. To the sixth interrogatory. Hitchcock & Hall were compl't's solicitors. Judge Hitchcock, one of the solicitors, did express strong dissatisfaction to my having made the deed to Henry V. Chamberlain, and gave his reasons for the same.

7. To the seventh interrogatory. The answer to this interrogatory has been already given.

To the fifteenth interrogatory. I do know the lot in question. I believe I knew it before the sale. At the time of sale there was a small enclosure around the lot, and a low wooden curb in front, marking the line of the pavement. On the east side several beautiful China trees were growing, and the lot lay within a few hundred feet of my late boarding house. There were many residences near the lot. I myself lived below the lot in 1827.

20. To the twentieth interrogatory. I have already stated, to the best of my knowledge and recollection, all that is material, as interrogated.

DAVID FILES.

Reduced to writing by me, and sworn to and examined before me, this 14th day of March, A. D. 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

The witness, William M. Garrow, being first duly cautioned, sworn, and examined, deposes and says, in answer –

1. To the first interrogatory. My name is Wm. M. Garrow; I am an attorney at law, and reside at Mobile.

2. To the second interrogatory. I know both the parties, and have known them nearly as far back as I can recollect.

8. To the eighth interrogatory. In the summer of 1832 I received a letter from Stephen Sewall, the compl't in this suit, employing me to attend to his business generally, and referring particularly to a mortgage of one Stephen Chandler. I have made diligent search for this letter, but have been unable to find it, and believe it lost. This business had previously been, and then was, in the hands of Mr. Chamberlain, the defendant, who had been acting as agent of the compl't for a number of years. The letter also requested me to inform Mr. Chamberlain of my

appointment as agent, and call on him for a settlement of his agency. I did call on him, and informed him of the contents of my letter. He appeared to be satisfied, and informed me that he would make up his accounts. He also told me that he had bought in the Chandler lot for Mr. Sewall, and that he, Mr. Sewall, might either take it, or he, Chamberlain, would keep it, at Mr. Sewall's option. I communicated with Mr. Sewall on the subject; and the letters hereto annexed, marked exhibits No. 1 and 2, are the original letters written by me. After the receipt of the first letter, at the request of the complainant, I called on Mr. Chamberlain, and requested a conveyance of the lot to the compl't, but he declined to make a deed. I had previously informed him of the compl't's electing to take the lot. I refer to my letter of 4 Sept'r, 1833, hereto annexed, for a more full history of the transaction. Chamberlain did not positively refuse to make the conveyance, but he seemed unwilling to do it, and I could not prevail on him so to do. He did not deny, at any time, that he was acting as agent for the compl't in this matter. It was some time after my appointment before I obtained Mr. Chamberlain's account. The original is lost, but a true copy is contained in my letter. In order to procure a settlement I was compelled to sue Mr. Chamberlain, and obtained judgment in the circuit court of Mobile county. The item of about $72, the credit for the Chandler lot, was not included in this judgment. At the request of Mr. Chamberlain, I stayed the execution, to enable him to make a settlement with the compl't, as he went to the North that summer. On the return of Mr. Chamberlain from the North I was informed by him, and was also advised by letter from compl't, that the judgment had been settled, but that the matters of the Chandler lot *was* still left open for settlement. I accordingly, in pursuance of compl't's request, entered satisfaction of the judgment. I refer to my letters attached, which were written by me during my agency, for more particulars, and also for the purpose of confirming my own recollection; but, independently of the letters, I have a distinct recollection of the facts.

9, 10, 11. To the ninth, tenth, and eleventh interrogatories. I refer to my answer to the 8th for an answer.

12. To the twelfth interrogatory. After my letter of August 5th, 1835, I considered that my agency ceased, and that Henry Chamberlain succeeded as agent, and to whom I believe I handed over the papers in my hands. I do not recollect of receiving a letter from Mr. Sewall subsequently to this. This change in the agency was made, I believe, in consequence of a suggestion made in my former letter to Mr. Sewall.

20. To the twentieth interrogatory. During the time I was acting as agent for the compl't I supposed the title of the lot was in Mr. Chamberlain, and was never informed to the contrary by him, to the best of my recollection. I was not informed of the fact of his having conveyed it until some time in the year 1842. I never gave the compl't any notice that Chamberlain had conveyed it.

WM. M. GARROW.

Reduced to writing by me, and sworn to and examined by me, this 16th day of March, A. D. 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

Kiah B. Sewall, being first duly cautioned, sworn, and examined, deposes and says, in answer—

1. To the first interrogatory. My name is Kiah B. Sewall, an attorney at law, and reside in Mobile.

2. To the second interrogatory. I know the parties. I knew Stephen Sewall in Boston, in 1826 or '7, but have not seen him since that time. Have known the defendant since 1839, in Mobile.

14. To the fourteenth interrogatory. In December, 1842, I received a letter from the complainant, requesting me to call upon the defendant for a settlement of the Chandler lot or claim—to arrange it amicably if possible, otherwise to bring suit; and also requesting me, before commencing suit, to ascertain the facts of the case. I did so, and ascertained how the matter stood on the records in relation to the foreclosure of the lot. I also examined the records of the county court, and there found the record of a deed from the defendant to S. P. Bullard for the lot in question, purporting to have been made in 1834. I thereupon addressed a note to defendant, presenting the claim of complainant, and urging an arrangement of it, stating that I was authorized by complainant to settle it with him, and that it was the wish of complainant to settle it amicably. In answer to this, I received a note in writing, hereto annexed as part of my answer, marked exhibit No. 3. I endeavored to see him personally, but failing in that, addressed him another note on the subject, to which I received no answer; of all of which I immediately informed complainant; then brought suit.

K. B. SEWALL.

Sworn to and subscribed before me, this 16th day of March, 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

The witness, Samuel P. Bullard, being first duly cautioned, sworn, and examined, deposes and says, in answer—

To the 1st interrogatory he answers: His name is Saml. P. Bullard; his occupation, that of a merchant; his residence, the city of Mobile.

To the second he answers: That he knows the parties, both complainant and defendant; he has known them within the last 16 years.

To the seventeenth he answers: That he is the owner of two lots of land, situated on the southwest corner of St. Emanuel and Theatre streets, in the city of Mobile. He purchased them of Henry V. Chamberlain and Jack F. Ross. The lot bought of H. V. Chamberlain was paid for in cash, $600, on the 8th of September, 1834; that bought of Ross was paid for ¼ cash, residue 6, 12, 18 months, amounting to two thousand dollars. The lot bought of Chamberlain was next to the cor-

ner, having a front on St. Emanuel street of 50 French feet, and 80 French feet deep. The lot bought of Ross had the same front on St. Emanuel street, and the same depth, but was angular with Theatre street, and not so wide in the rear. It is situated about 4 squares from the centre of business at that time. The lot bought of Chamberlain was known as the Chandler or Sewall lot. The position of the corner lot was the best, and it was therefore more valuable, but its angular form lessened its value some. What would be the value now of the Chandler lot, without reference to his improvements, he cannot determine. He had to give more for the corner lot, partly because property at the time had risen in value, and, besides, it was known he required it to build upon, as he had intended. He considered at the time he paid twice the amount of its intrinsic value, because he was compelled to have it.

18. To the eighteenth he answers: That the Chandler lot was enclosed with a wooden fence when he bought it. There was a side walk in front, framed of earth and shell, by whom made, he does not know.

20. To the twentieth he answers: He knows nothing further important to the parties at issue, or material to this examination.

Reduced to writing by the witness, and sworn *and sworn* to, and examined before me, this 18th day of March, A. D. 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

The witness, Gorham Davenport, being first duly cautioned, sworn, and examined, deposes and says, in answer:

1. To the first interrogatory. My name is Gorham Davenport. I am a merchant and resident of Mobile.

2. To the second interrogatory. I know the parties, and have known them for thirty years and more; knew them in Hallowell, Maine.

14. To the fourteenth interrogatory. On the 10th May, 1842, I received a letter from Stephen Sewall, requesting me to call on the defendant, Chamberlain, to effect a settlement with him of the matter of the Chandler lot, referred to therein, which letter, marked D, is hereto annexed as part of my answer to this interrogatory. In pursuance of this request, I immediately called on Mr. Chamberlain, and requested an arrangement of the matter, according to the terms of said letter. I stated to him particularly its contents, and remarked that I thought the lot ought to be conveyed to Mr. Sewall. He did not object to the claim, and I understood from him that the matter was open and unsettled between them. He promised to make out a full statement and bring it to my office, and took directions where to find it. He further remarked, that friend Sewall was an everlasting writer. He did not however call at my office as he agreed to, and I saw him several times afterwards during the summer, and repeatedly urged upon him the necessity of his complying with his promise—that we might settle the matter, or that I might inform Mr. Sewall how the matter stood. To all these requests, he continued to promise to call as before, but never did so,

until I became convinced that I could do nothing with him, and, accordingly, under date of November 5th, 1842, I wrote Mr. Sewall to that effect, and advised him, if he ever expected to get any thing from this claim, to employ an attorney. The letter referred to was the only communication I received from Stephen Sewall for the last 14 years, and this is the only time and matter in which I have acted for him, during that period, in any way whatever.

15. To the fifteenth interrogatory. I knew said lot at that date and earlier. In 1830 it was enclosed with a very tall fence, and kept as a garden. I believe the fence was made by Chandler some years before; it was in good order in 1830. I boarded with Mrs. Brown, on the next square opposite to it, in 1826 and 1827. The property in that neighborhood was considered, at that time, the most eligible for private residences in the city.

20. To the twentieth interrogatory. When I called on Mr. Chamberlain, as before stated, I supposed that the title to the Chandler lot was in him, and he did not inform me to the contrary; nor did I know that it had been passed from him till after this suit was brought. The defendant went north early in the spring of 1841, and I saw him in October that year, in Boston, and think he sailed from there for Mobile the latter part of that month. He previously spent several summers at the north. I don't recollect the years.

GORHAM DAVENPORT.

Reduced to writing by me, and sworn to and subscribed before me, this 16th day of March, 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

The witness, Joseph Wiswall, being first duly cautioned, sworn, and examined, deposes and says, in answer—

1. To the first interrogatory. My name is Joseph Wiswall. I reside in Mobile.

2. To the second interrogatory. I know both parties, and have known them for some twenty years.

15. To the fifteenth interrogatory. I know the lot in question, and knew it in 1830, and previously; at that time it was well enclosed. This lot, together with those adjoining on St. Emanuel street, were used as a garden. The enclosure had been made by Stephen Chandler, who had also filled up and levelled the lot. In 1830, the fence, which was a good high one of board, was in good order. In front, on St. Emanuel street, there was a wooden curb, and the side walk was well filled up. This had also been done by Chandler. It was a good, level, and passable side walk. The lot was at that time very eligible as a building lot. There were many residences in its immediate vicinity.

16. To the sixteenth interrogatory. I knew of the debt and mortgage from Chandler. I was applied to by Mr. Chamberlain, the defendant, about the time of commencing the foreclosure, who wished to

know if I had any claim to the premises, as, if I had, it would be necessary to make me a party, which would subject me to both trouble and expense. I replied, that I did not consider that the lot was worth more than enough to pay the Sewall mortgage, and I was therefore perfectly willing to disclaim any right to it. I told him that I disclaimed, and think I also gave him a disclaimer in writing. He appeared in the matter as the agent of Sewall, and I considered that he was treating with me as such. I was induced to believe, from this conversation, that the object was to foreclose and get back the lot for Sewall, and that it would be bought in for Sewall, to the amount of the mortgage. These things induced me not to attend the sale, as I would have done but for the impression that it would be bid in even to the amount of the mortgage. I remarked, at the time of this conversation, that I presumed the lot would be bid in for Sewall; but do not recollect what reply Mr. Chamberlain made. My full belief at this time, and at the time of the sale, and for a long time afterwards, was, that it was bid in. I would have attended the sale but for this belief. These impressions, and this belief, I derived altogether from my conversation with defendant upon the subject at that time.

19. To the nineteenth interrogatory. I held a mortgage on the lot in question in connection with several other lots, embracing, altogether, about three-fourths of the square. But my mortgage being subsequent to Sewall's, on the Chandler lot, I considered that portion of the security unavailable and nearly worthless; and as to the rest of this interrogatory I have answered it in full in my answer to the 15th.

20. To the 20th interrogatory. I know nothing further material to the matters in issue, or of benefit to the parties.

JAS. WISWALL.

Reduced to writing by me, and sworn to and subscribed before me, this 18th day of March, 1844, as witness my hand and seal.

ADDISON FOX, [SEAL.]
Commissioner.

January 5th, 1843.

K. B. SEWALL, esq.

DEAR SIR: I acknowledge the receipt of your note of yesterday, touching the claim of Mr. Stephen Sewall, in answer to which I respectfully reply that the subject matter is considered debatable.

Very respectfully, your obdt. servant,
HENRY V. CHAMBERLAIN.

Exhibit No. 3.

Attest: ADDISON FOX, *Comm.*

Exhibit D, referred to in testimony of Gorham Davenport.

WINTHROP, *April 8th*, 1842.

GORHAM DAVENPORT.

DEAR FRIEND: I have some unsettled business in Mobile, which I

wish much to bring to a close. I sold a Fort lot, some twenty years ago, to Stephen Chandler for about $500, and took a mortgage on the same. This mortgage was foreclosed some five years ago by H. V. Chamberlain, esq., who purchased it for me at a small price, as he stated to judge Wm. M. Garrow, but took a deed in his own name, and was to give a deed to me if I required it. Judge G. advised me to take the lot, as it was bid off for much less than it was worth. But I have not been able to settle it with Mr. Chamberlain. I presume our friend, Mr. Garrow, would have settled it, but he was appointed judge about that time, and wished me to pass the business to other hands, together with some other business that he attended to for me. I did put the business into the hand of Hy. Chamberlain, the judge's son. He attended to the other part of my business very satisfactorily, but this Chandler matter he neglects. I am, therefore, under the necessity of employing some other person to settle the business. I understand by Judge Chamberlain that the judgt. obtained against Chandler was over $2,000, but I suppose he is not worth much of anything; but I certainly ought to have the lot, or the value of it when it was sold, and the interest to this time, is all I want; and then if the demand against Chandler is worth anything, I should like it. Now, my object in writing you is to get you to see Judge Garrow, who will tell you, I presume, how the matter stands. You can look at the court record and find the judgt. against Chandler and his note, and you can see Judge Chamberlain. All I want of Mr. Chamberlain is, to pay me what the lot was actually worth when he bought it, and the interest to this time. He told me when in Boston, some years ago, that he would make me an offer for the whole demand, lot, &c., but he has not done it. Will you learn the situation of this matter so soon as you receive this, and ask our friend Chamberlain what he is willing to do. I wish to be liberal with him; I only want what is right. Please let me hear from you as early as convenient.

Yours, respectfully,
STEPHEN SEWALL.

I concluded to send you a copy of my last letter to the Judge as annexed. Please say if our old friend, Samuel Fu, of Claiborne, is still alive, and worth anything; also, H. W. Taylor, the lawyer there 20 years ago. Also, if Archibald McMannas, of Pascagoula, Miss., is alive, and worth property. If you can answer these inquiries without much trouble, I wish you would.

Exhibit No. 1, *referred to in the testimony of Wm. M. Garrow.*

MOBILE, *August 5th*, 1835.

DEAR SIR: I received your last letter some time since, and have delayed answering it until now, that I might see Mr. Files, the clerk of the district court, and be enabled to answer with more certainty your enquiries in relation to the Chandler lot. Mr. Files informs me that the mortgage was foreclosed in his court, and that the lot was sold under

the decree by him; that Mr. Chamberlain bought it in, as he then expressly declared, for you, and that as soon as the conveyance was made out he intended to convey it to *you*. Mr. C. also told me, when I first spoke to him on the subject, that he had bought it for you, and that you might either take it or he would keep it at the price which he had bid for it. There can be no doubt then that you can, by a bill in equity, compel him to convey the lot to you. It is for you to determine whether you will do so or not. The lot is certainly now worth a great deal more than he gave for it. I am glad to hear that you have settled with Mr. C. for the money he had received on your account. A judgment was entered at the last term of the circuit court against him for the full amount of your claim, with the understanding that I would not issue execution on it until he could go on to the north and settle it with you. As he has now done so, I will cause a satisfaction of the judgment to be entered. The difficulty of procuring the testimony of Mr. Croswell was the cause of great delay in obtaining the judgment. I see you still ask me about the money in Mr. Gordon's hands. Shortly after my appointment as judge of the county court, I wrote to you to inform that, although my office did not by law prevent me from commencing suit against him, I was still unwilling to do so, and requested you to get some other lawyer to do it, and I was in hopes you would have done so, as I am convinced he will not pay it without suit. I think it would be better to get some other lawyer of the place to attend to it. Under present circumstances I should be unwilling to sue him. Mr. Chamberlain has a son here practising, who will, I have no doubt, undertake it for you.

I am, very respectfully, your obt. servt.,

WM. M. GARROW.

Exhibit No. 2, referred to in the testimony of Wm. M. Garrow.

MOBILE, *Sept. 4th*, 1833.

DEAR SIR: I have at length succeeded in obtaining from Mr. Chamberlain a statement of his account with you, a copy of which you will find on the other side. You will observe that he has put down the several items for which he claims credit, and has charged 10 per cent. commission, and allowed nothing for interest. Be pleased to examine it, and make out from it, against him, such an account as you think just, and send it on to me, and if he will not pay the balance that you make out to be due you, I will endeavor to obtain a judgment against him for as much of it as I can. I do not think I can obtain interest for longer time than from the time a demand was made, and I can only prove a demand at the time I presented him your letter. If you have any means of proving a demand previous to that, please let me know it. You will observe he has credited you with the sum of $72 00, as received on your judgment against Chandler; this is the sum for which the lot was sold to him, after deducting all the costs and expenses of sale. I told him that you preferred taking the lot yourself, and re-

quested a conveyance from him to you, but he now seems unwilling to do it. If you still prefer taking the lot yourself, throw that item out of your account, and I will bring a suit in equity against him to compel him to convey it to you, in which I have no doubt I can succeed. Mr. Gordon tells me that, although he has received the money you mention, yet the claim was put in his hands by Mr. Moses Sewall, and he always understood that it belonged to him. He has an account against Mr. M. Sewall for some law business he has done for him, which he thinks he has a right to retain out of that money. He says that he has written to you several times on the subject, and has received no answer. Let me know whether you are willing to allow his claim, and whether you wish proceedings to be instituted against him. As he is member of the same bar with me, I would rather not do so; but if you wish it, it shall be done.

Respectfully, your friend,
WM. M. GARROW.

To Mr. STEPHEN SEWALL, *Winthrop, Me.*

DR. *Mr. Stephen Sewall, in account current,* 1828, *with* CR.
H. V. Chamberlain.

To amount paid postage of your letters, dated as follows, viz. July 28th, 1827, 25c.; Nov. 27th, 50c. - - -	$0.75	By am't collected of S. H. Garrow	$410.15
Feb. 4th, 1828.		Do. received of R. H. Croswell	209.00
Feb'y 4th, 1828, 75c.; Feb'y 14th, 50c.	1.25	Do. received on your judgment in District Court vs. S. Chandler - - -	72.00
2 Letters, Feb. 25th, 1828, 50c.; March 10 and 24, 50c. . - . -	1.00		691.15
Amount paid on 1 do. of Clapp & Sewall's, June 12th - - - -	0.25	Commissions, 10th per ct.	69.10
To do. on 2 do. of Oct. 4 and 30, 1828	0.50	Per acc. . - -	105.67¾ 174.77¾
To do. on 1 do. Dec. 23d, 1828, 25c.; Jan'y 5th, 1829, 25c. - - -	0.50		
To 1 do. March 5th, 1830 - -	0.25		
To attending to the sale and conveyance of your lot on St. Louis street to R. R. Croswell - - -	10.00		
To amount paid Battelle & Townsend for advertising restoration of former power of attorney - - -	4.50		
To a journey to Cahaba to secure your claim against Broughton & Foster	38.18¾		
To attending to the claims of Hugh Krebs before the commissioners of Land office, to quiet the title of A. W. Gordon to Liverpool wharf -	25.00		
To attending court at Canton, Wilcox co., on account of your suit vs. R. H. Gregg - - - - -	25.49		
	105.67¾	Balance - - -	$516.37½

Published 19th March, 1844.

DAVID FILES,
C. C. C. S. D. Ala.

And afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and forty-five, being a day of

a term of said court, begun and held in and for said district at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-four, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

On motion of defendant's attorneys, it is ordered by the court that this cause be continued.

And afterwards, to wit, on the seventh day of May, in the year of Lord one thousand eight hundred and forty-five, being a day of a term of said court, begun and held in and for said district, at Mobile, on the third Monday of April, in the year of our Lord one thousand eight hundred and forty-five, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

This day came the parties by their solicitors, and the cause being heard upon the bill, answer, replication, and proofs, it is thereupon ordered, adjudged, and decreed, that the said bill of complaint be dismissed, and that the said defendant pay the costs of this suit, for which execution may issue.

And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the third Monday of April, in the year of our Lord one thousand eight hundred and forty-five, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

On motion, it is ordered by the court that the decree rendered in this cause at a previous day of this term be vacated and set aside.

And afterwards, to wit, on the eighth day of May, in the year of our Lord one thousand eight hundred and forty-five, being a day of a term of said court, begun and held in and for said district, at Mobile, on the third Monday of April, in the year of our Lord one thousand eight hundred and forty-five, the following proceedings were had, to wit:

STEPHEN SEWALL
vs.
HENRY V. CHAMBERLAIN.

This day came the parties by their solicitors, and the cause being heard upon the bill, answer, replication, and process, it is thereupon ordered, adjudged, and decreed, that the deposition of Gorham Davenport be suppressed, on the ground that he was the security for the costs in this case; that the plea of the statute of limitations be sustained, and

said bill of complaint be dismissed, and that the defendant pay the costs of this suit, for which execution may issue. And the complainant thereupon prays an appeal from this decree to the next term of the Supreme Court of the United States, and tenders an appeal bond in the sum of two hundred dollars, executed by Gorham Davenport, which is approved, and said appeal granted.

Bond.

United States of America, circuit court of the United States for the fifth judicial circuit, southern district of Alabama.

Know all men by these presents, that I, Gorham Davenport, am held and firmly bound unto Henry V. Chamberlain, in the just and full sum of two hundred dollars; for the payment of which, well and truly to be made, we, and each of us, bind ourselves, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this ninth day of May, in the year of our Lord one thousand eight hundred and forty-five. The condition of the above obligation is such, that whereas, heretofore, to wit, on the nine day of May, A. D. 1845, being a day of a term of said court, begun and held in and for said district, at Mobile, on the third Monday of April, A. D. 1845, in a certain cause in equity lately pending therein, wherein Stephen Sewall was complainant, and Henry V. Chamberlain was defendant; the said Henry V. Chamberlain recovered a judgment against the said Stephen Sewall, from which said judgment the said Stephen Sewall has appealed to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December, A. D. 1845. Now, therefore, if the said Stephen Sewall shall prosecute with effect his said appeal, or failing therein, shall pay to the said Henry V. Chamberlain all costs and damages which he may sustain by the failure of the said Stephen Sewall to sustain his said plea, then the beforegoing obligation to be void, otherwise to be and remain in full force and virtue.

GORHAM DAVENPORT. [SEAL.]

Signed, sealed, and delivered in presence of—

K. B. SEWALL.

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and beforegoing seventy-three pages contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined in the court aforesaid, wherein Stephen Sewall was complainant, and Henry V. Chamberlain was defendant, as the same remain on file and of record in said court.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said court, this sixteenth [SEAL] day of February, in the year of our Lord one thousand eight hundred and forty-six.

JOHN FITTS,
Clerk C. C. So. Dist. Ala.

Filed 4th September, 1846.